

United States Senate

May 12, 2010

Mr. Al Armendariz
Regional Administrator, Region 6
Environmental Protection Agency
1445 Ross Avenue, Suite 1200
Dallas, TX 75202-2733

Dear Mr. Armendariz:

I am requesting on behalf of a constituent, Mr. David McCoy from Citizen Action that the EPA Kerr Laboratory in Ada, Oklahoma review a report by the New Mexico Environmental Department on monitoring wells at the Sandia mixed waste landfill entitled "Evaluation of the Representativeness and Reliability of Groundwater Monitoring Well Data, Mixed Waste Landfill, Sandia National Laboratories" written by William P. Moats et. al. in November of 2006. We made a similar request in April of 2007 (attached) but Mr. McCoy requests we make this request once more in light of the recent EPA Inspector General findings on the mixed waste landfill matter. I am attaching Mr. McCoy's request to my office. My office point of contact is Dr. Jonathan S. Epstein.

I thank you for your time in this matter and look forward to your response.

Sincerely,


Jeff Bingaman
U.S. Senator

From: Dave McCoy [mailto:dave@radfreenm.org]
Sent: Thursday, April 29, 2010 4:04 PM
To: Epstein, Jonathan (Bingaman)
Subject:

April 29, 2010
Senator Jeff Bingaman
703 Hart Senate Office Bldg.
United States Senate
Washington, D.C. 20510
Attention: Mr. Jonathan Epstein

Dear Jonathan,

Thank you for your assistance in obtaining the EPA Office of Inspector General Report of April 14, 2010, *Region 6 Needs to Improve Oversight Practices*. Mr. Ed Baldinger sent me an electronic copy of the report and the Attachment B that I am attaching for you in case you did not receive it from the Inspector General. I am also including an article and a staff editorial from the Albuquerque Journal regarding the OIG report.

The Citizen Action complaint filed with the EPA Office of Inspector General alleged: 1) lack of oversight by EPA Region 6 for the NMED and 2) that false data was used to make the decision to leave the dump's dangerous wastes below a dirt cover. The OIG report only addresses the first concern.

The OIG Report is significant in several respects:

- EPA Region 6 technical staff made a report that agreed with groundwater monitoring concerns of Citizen Action and Robert Gilkeson, Registered Geologist.
- The EPA Region 6 improperly placed a national security marking on its report stamped "confidential" to avoid providing the report to Citizen Action and Mr. Gilkeson under the Freedom of Information Act.
- Region 6 and the NMED deliberately avoided documentation of conversations and communications to avoid providing any records to Citizen Action.
- The lawyers in Region 6 provided a letter to Citizen Action that did not note the specific details of the assessment of the well monitoring network.
- Region 6 actions are a violation of EPA's Public Involvement Policy and EPA's Records Management Policy.

Citizen Action has been unable to obtain the original EPA Region 6 report and the original OIG report written by the 3 man investigative team that included Mr. Edward Baldinger. Citizen Action requested both documents under the Freedom of Information Act, but the documents are still being withheld both by Region 6 and the EPA OIG.

Mr. Baldinger identified 2 major concerns to you. A specific concern by Mr. Baldinger was that the OIG team identified the need for the EPA National Risk Management Research Laboratory Ground Water and Ecosystems Restoration Division (Kerr Laboratory) in Ada, OK to review the NMED report the *Evaluation of the Representativeness and Reliability of Groundwater Monitoring Well Data, Mixed Waste Landfill, Sandia National Laboratories*, (i.e., the Moats report). However, that review was prevented by Mr. Najjum.

Unfortunately, as Mr. Baldinger predicted, the OIG report does not identify that recommendation. Citizen Action and Mr. Gilkeson would appreciate for Sen Bingaman's Office to send the Moat's Report for review. This is called for especially in light of the fact that the NMED and Region 6 have acted in violation of public participation policy and hidden technical facts.

A second concern of Mr. Baldinger was that the OIG investigation team was prevented by Mr. Najjum from obtaining New Mexico Environment Department (NMED) records that were necessary to be reviewed as part of the audit. Mr. Baldinger asserted that the issue of whether EPA Region 6 properly conducted oversight of the NMED was unable to be adequately addressed by the audit because Mr. Najjum blocked the audit team from obtaining state records.

One of the state records held in secret by NMED was the January 31, 2006 TechLaw, Inc. report that NMED sued Citizen Action to keep secret. Citizen Action obtained the TechLaw report in November 2009. The report documents that the fate and transport modeling for the Mixed Waste Landfill is a "Black Box" that NMED should not rely upon. The Moats report nevertheless, relied on the defective Sandia computer model. Mr. Moats ignored the problems presented in the TechLaw report when he wrote his report. This is further information that Moats report may be highly inaccurate in its assessment that the dirt cover is protective of public health and the environment.

TechLaw reports that the dirt cover design is defective. TechLaw reports that the neutron probes cannot provide the necessary early detection of water movement through the dirt cover because the probes are below the buried waste.

On January 29, 2010, as a result of the counter lawsuit of Citizen Action, we obtained access to over 13,000 pages of documents that the NMED has kept secret for over a decade regarding permitting matters in New Mexico. For Los Alamos National Laboratories alone, there were 221 documents totaling 3,700 pages that had not been put in the administrative record. TechLaw also rejects the computer modeling for contaminant movement beneath Los Alamos Material Disposal Areas G, H and L.

Mr. Baldinger informed CA that the IG team was prevented by Mr. Najjum from obtaining New Mexico Environment Department (NMED) records that were necessary to be reviewed as part of the audit. Mr. Baldinger asserted that the issue of whether

EPA Region 6 properly conducted oversight of the NMED was unable to be adequately addressed by the audit because Mr. Najjum blocked the audit team from obtaining state records.

A comment by David Miller of Sandia National Laboratories contained in the attached John Fleck article is incorrect. The groundwater monitoring network remains defective at the Mixed Waste Landfill even after the installation of the new monitoring wells. There are two important zones to monitor and the new monitoring wells are not installed in either zone.

Citizen Action and Mr. Gilkeson are requesting that in light of the serious violations described in both the OIG report and the maintenance of secret record keeping describing technical deficiency for the dirt cover that Senator Bingaman's Office should directly request review of the Moat's report by the EPA Kerr Laboratory.

Jnoi Arends of Concerned Citizens for Nuclear Safety, Robert Gilkeson and myself would appreciate meeting with you in near future to discuss problems related to Los Alamos National Laboratory as well.

Sincerely,

David B. McCoy, Executive Director
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